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FILED
FEB 24 1966
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IN THE

Supreme Court of the United States

October Term, 1965

No. 828

William R. Lichota, and
Edith F. Lichota, Petitioners

vs

United States of America, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR REHEARING

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I

PETITION FOR REHEARING

Petitioners present their petition for a rehearing of this Court's order dated January 31, 1966, denying the petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit, and, in support thereof, respectfully show:

GROUNDS FOR REHEARING

I

Unless it is possible for an individual to conspire with himself, this conviction is impossible to sustain.

E. F. Lichota was convicted of mail fraud and conspiracy to commit mail fraud. Her alleged co-conspirators were W. R. Lichota and Samuel Haddad. At the commencement of trial, Mr. Haddad was dismissed, and there is not a single word in the record to indicate that he, in any way, conspired with either of the petitioners. Although available to the District Attorney, and ordered to remain at hand throughout the trial, he was not called as a witness.

At the time of the trial, Mr. Lichota had been adjudicated to be mentally incompetent by a court of competent jurisdiction. This fact was known to the United States government in whose custody he had spent considerable time at the Veterans Administration Hospital at Chillicothe, Ohio.

Under these circumstances, with whom did Mrs. Lichota conspire? Sam Haddad? If he were the conspirator, why was he neither tried nor called as a witness? W. R. Lichota—an incompetent?

Conspiracy, by its nature, requires two or more persons. These two or more persons must be sufficiently possessed of their mental faculties to form the intent which is a vital element of the crime of conspiracy.

Since Mr. Haddad is not implicated by the evidence, and Mr. Lichota was incompetent, there is no co-conspirator left who could have joined with Mrs. Lichota to commit this crime.

To obtain this conviction, the prosecuting attorney used a known incompetent for the necessary second conspirator. Then to lend an aura of legitimacy, he introduced the testimony of an investigator who was, or had been, in the pay of the United States, to relate skillfully into the record what that incompetent was supposed to have said. Thus the statements which would have been inadmissible from an incompetent, were admitted, over objection, by the testimony of one whose mental competence to testify would not be questioned.

To complete the facade of evidence that the petitioners' conduct was fraudulent, the District Attorney dismissed Mrs. Lichota's work as being of no value. The preparation of a prospectus for an original securities issue was dismissed as too difficult for this woman and simultaneously a form-filling job that any secretary could do on her coffee break. Upon this "preponderance" of the evidence, Mrs. Lichota was convicted of conspiracy to commit mail fraud.

There is one nagging question. With whom did she commit it? If there is no answer, we have sustained a conviction resting upon someone's view of the immediate ends of justice. Whenever statutes are construed and applied to ful-

fill only the immediate and desired end, without regard for the intent of the legislators, and without regard for the effect of the legal precedent being established, we wash away a society founded upon basic liberties guaranteed to all of the individuals living within that society. We live, instead, at the threshhold of a totalitarian state.

II

At the time of trial, the prosecuting witness had seized assets of the Elton Investment Company, an associate of the petitioners, and insurance settlements far in excess of all gross amounts ever paid to the petitioners or any affiliated companies. It should be apparent that, if there was a scheme involved in these proceedings, it was the scheme of the prosecuting witness to victimize the petitioners and retain this property it had seized. Its unwitting accomplice has been the federal government.

To enlist the aid of the federal government, the Pure Milk Association persuaded the Postal Department that it had been defrauded and needed its help. Without revealing the property it had seized and the insurance settlements it had obtained, the prosecuting witness amassed its political influence to pervert the function of the Postal Department and turn the District Attorney's office into a sort of super collection agency. To this very date the office of the District Attorney has no knowledge of the amount of property seized by the prosecuting witness, but that office has been used to make an unconscionable profit for the prosecuting witness in a matter which is basically a civil dispute.

There was a contractual relationship between the parties which terminated at the onset of a proxy fight for control

of the Pure Milk Association. That contractual relationship authorized and contemplated the quantity variance which is the primary basis for this conviction. If the parties contemplated such a quantity differential six months in advance of the invoices which are the subject of the indictment, then any dispute as to the treatment of such quantity differential must be a civil argument. It is a perversion of the Mail Fraud Statute to characterize the relationship as fraudulent, since the person committing a fraud rarely apprises the intended victim of the nature of the scheme in advance.

This point of view is consistent with the facts. Recently, petitioners have learned that the prosecuting witness had been itself convicted of conspiracy in a different matter by the Federal District Court in Chicago, Illinois, and the conviction was sustained on final appeal. With the investigative powers of the federal government, this prior conviction of conspiracy must have been known at the time of trial.

Thus, the defendants, whose reputations had always been exemplary, were convicted of conspiracy on the testimony of a convicted conspirator, a mental incompetent and a paid investigator who was, or had been, in the pay of the United States.

CONCLUSION

For the foregoing reasons, it is respectfully urged that the petition for rehearing be granted, and that, upon further consideration, a writ of certiorari issue to the United States Court of Appeals for the Sixth Circuit.

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Edith F. Lichota
Counsel for Petitioners

CERTIFICATE OF COUNSEL

//I, Edith F. Lichota, counsel for the above named petitioners, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2, of the Rules of this Court.

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Edith F. Lichota
Counsel for Petitioners